

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**September 4, 2003**

**IN RE:**

**DOCKET TO DETERMINE THE COMPLIANCE  
OF BELL SOUTH TELECOMMUNICATIONS,  
INC.'S OPERATIONS SUPPORT SYSTEMS  
WITH STATE AND FEDERAL REGULATIONS**

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**DOCKET NO.  
01-00362**

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**ORDER APPROVING SETTLEMENT AGREEMENT AND  
VACATING ORDER IMPOSING SANCTIONS AGAINST  
BELL SOUTH TELECOMMUNICATIONS, INC.  
PURSUANT TO TENN. CODE ANN. § 65-4-120**

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This matter came before Chairman Deborah Taylor Tate, Director Sara Kyle and Director Ron Jones of the Tennessee Regulatory Authority (the "TRA" or "Authority"), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on July 21, 2003, on remand from the Tennessee Court of Appeals, for consideration of the vacatur of the *Order Imposing Sanctions Pursuant to Tenn. Code Ann. § 65-4-120*, consistent with the Settlement Agreement between the Authority and BellSouth Telecommunications, Inc. ("BellSouth").<sup>1</sup>

**Background**

This docket was convened in the context of proceedings before the TRA considering BellSouth's application for entry into the interlata long distance telecommunications market pursuant to 47 U.S.C. § 271. During the course of discovery in this docket, a dispute arose

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<sup>1</sup> The Settlement Agreement was approved by a majority of the panel during the May 12, 2003 Authority Conference. Director Jones did not vote with the majority.

between the parties regarding the production of certain information. A Pre-Hearing Officer charged with the responsibility of preparing this docket for hearing entered an order against BellSouth compelling discovery of the information. Later, the Authority held a hearing to determine whether BellSouth should be sanctioned.

At an Authority Conference held on June 11, 2002, a majority of the Directors voted to impose sanctions against BellSouth for failing to comply with the order compelling discovery.<sup>2</sup> On June 28, 2002, the Authority issued the *Order Imposing Sanctions Pursuant to Tenn. Code Ann. § 65-4-120* ("*Order Imposing Sanctions*").<sup>3</sup> On August 27, 2002, BellSouth filed a *Petition for Review* in the Middle Section of the Tennessee Court of Appeals, seeking reversal of the *Order Imposing Sanctions*. The *Petition* named the TRA as the respondent and was assigned Docket No. M 2002-02069-COA-R12-CV. AT&T Communications of the South Central States, Inc. ("AT&T") later petitioned to intervene in the appeal. The Authority filed the record of the docket with the Court. Briefs were filed by all parties and the Court of Appeals set a schedule for oral argument.

Thereafter, negotiations between BellSouth and the TRA resulted in a proposed Settlement Agreement. The proposed Settlement Agreement was placed before the voting panel in this docket at a regularly scheduled Authority Conference held on May 12, 2003, consistent with the requirements of Tennessee's Open Meetings Act, Tenn. Code Ann. § 8-44-101, *et seq.*<sup>4</sup>

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<sup>2</sup> Director H. Lynn Greer, Jr. and Director Melvin J. Malone voted to impose sanctions against BellSouth. Chairman Sara Kyle did not vote with the majority.

<sup>3</sup> The terms of the former Directors of the Authority, Chairman Sara Kyle, and Directors H. Lynn Greer, Jr. and Melvin J. Malone, expired on June 30, 2002. Chairman Kyle was reappointed and commenced a new term as a Director of the Authority on July 1, 2002. Pursuant to the requirements of the amended provisions of Tenn. Code Ann. § 65-1-204, a three member voting panel consisting of Chairman Kyle and Directors Deborah Taylor Tate and Ron Jones was randomly selected and assigned to TRA Docket No. 01-00362. On July 1, 2003, Director Tate assumed the position of Chairman of the TRA.

<sup>4</sup> See, Transcript of Authority Conference, pp. 36-48 (May 12, 2003).

A majority of the panel<sup>5</sup> authorized General Counsel to execute the Settlement Agreement on behalf of the TRA and apply to the Tennessee Court of Appeals to return jurisdiction to the TRA to conduct proceedings consistent with the terms of the Settlement Agreement, including the vacatur of the *Order Imposing Sanctions*.<sup>6</sup> During the May 12, 2003 Conference, counsel for AT&T and MCI WorldCom, Inc. requested the opportunity to provide comments to the Directors at the time the panel considered the vacatur of the *Order Imposing Sanctions*.

Pursuant to that authorization, the Settlement Agreement between the Authority and BellSouth was executed on May 22, 2003 and filed in this docket. Also, on May 22, 2003, the TRA and BellSouth filed in the Tennessee Court of Appeals a *Joint Motion to Return Jurisdiction to the Tennessee Regulatory Authority for the Purpose of Conducting Proceedings Pursuant to the Settlement Agreement Between Petitioner and Respondent* ("Joint Motion"). On May 29, 2003, the Tennessee Court of Appeals issued an Order granting the *Joint Motion* and remanding this case to the TRA for the purpose of conducting proceedings pursuant to the Settlement Agreement. In addition, the Order directed the parties, upon vacatur of the *Order Imposing Sanctions*, to file a stipulation for dismissal of the appeal and for the assessment of accrued costs of appeal.

On July 11, 2003, this docket was placed on the agenda for consideration at the July 21, 2003 Authority Conference. On July 15, 2003, AT&T, TCG MidSouth, Inc., MCI Worldcom, Inc. and the Southeastern Communications Carriers Association ("SECCA") filed the *Comments*

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<sup>5</sup> Director Jones did not vote with the majority, citing the desirability of a definitive resolution of the issue of whether a pre-hearing officer has the authority to issue an order which may be relied upon to impose sanctions under Tenn. Code Ann. § 65-4-120.

<sup>6</sup> Under the Settlement Agreement, upon the vacatur of the *Order Imposing Sanctions*, BellSouth agreed, *inter alia*, to withdraw its appeal and pay the costs of the appeal.

of *AT&T, MCI and SECCA on Proposed Settlement* with the TRA. In their comments, AT&T, MCI and SECCA asked the Authority, if the Order is vacated, to leave the body of the Order intact but remove only its ordering paragraphs. On July 17, 2003, BellSouth filed *BellSouth's Response to Comments of AT&T, MCI and SECCA on Proposed Settlement*. BellSouth responded that it was not seeking the vacatur of the entire Order nor removal of the Order from the record of this docket.

#### **The July 21, 2003 Authority Conference**

At the regularly scheduled Authority Conference on July 21, 2003, the panel considered the above mentioned comments and response thereto in the context of the issue of whether to vacate the *Order Imposing Sanctions*. General Counsel for the TRA advised the Directors that the *Order Imposing Sanctions* would remain a part of the record in this docket even though the ordering clauses would be vacated. All parties agreed that leaving the *Order Imposing Sanctions* in the record would be acceptable. A majority of the panel voted to vacate the *Order Imposing Sanctions* with the understanding that the *Order Imposing Sanctions* would permanently remain in the record of Docket No. 01-00362.<sup>7</sup>

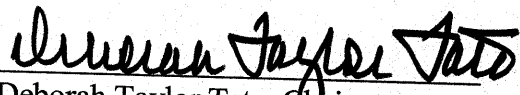
#### **IT IS THEREFORE ORDERED THAT:**

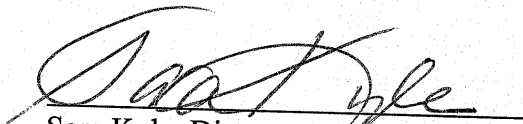
1. The Settlement Agreement between BellSouth Telecommunications, Inc. and the Tennessee Regulatory Authority executed on May 22, 2003 is approved.
2. The *Order Imposing Sanctions Pursuant to Tenn. Code Ann. § 65-4-120* is hereby vacated but shall permanently remain in the official record of Docket No. 01-00362.

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<sup>7</sup> Director Jones did not vote with the majority, based on the grounds he asserted at the May 12, 2003 Authority Conference. See note 4 herein.

3. Pursuant to the terms of the Settlement Agreement, BellSouth Telecommunications, Inc. should file a stipulation for dismissal of appeal with prejudice consistent with the May 29, 2003 *Order* of the Tennessee Court of Appeals in Appeal No. M2002-02069-COA-R12-CV no later than ten days from the entry date of this Order.

  
Deborah Taylor Tate, Chairman

  
Sara Kyle, Director

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Ron Jones, Director